R E M A R K S

Claims 4, 6-8, 10, 12 and 14-19 are pending and stand ready for further action on the merits. Claim 11 has been cancelled without prejudice.

Support the amendment to claims 6, 8 and 10 can be found on page 15, lines 12-13 of the specification.

Support for the newly added proviso to claim 12 can be found in the examples of the specification.

No new matter has been added by way of the above-amendment.

Prior Art Based Issues

The following rejections are pending:

(a) Claims 4, 6-8 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by BE 892401 (hereinafter BE '401) or JP 50129361 (hereinafter JP '361); and

(b) Claims 10, 12 and 14-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '361 in view of Szoka et al., USP 4,394,149.

Applicants respectfully traverse each of the rejections.

BE '401

In the outstanding Office Action, the Examiner cites BE '401 against independent claims 6 and 8 under 35 USC 102. In order to further distinguish from BE '401, Applicants have amended claims 6 and 8 to clarify that the concentration of the plant-activating agent has an upper limit of 500 ppm.

Also, Applicants enclose herewith a copy of the full Belgian Patent BE '401 for the Examiner's review. As the Examiner will note from the enclosed copy of BE '401, Applicants have circled relevant portions of this patent and have labeled these relevant portions "C", "D", "E" and "F". Also, Applicants now provide an English translation of these sections.

Relevant Portion Of BE '401 Labeled "C"

> One adds the concentrate of nutritive substances to the basic emulsion in a quantity such that, in the form of application to the plant, it is diluted and contains 0.2 - 0.8% of nutritive substances. (Page 4, lines 12-15).

Relevant Portion Of BE '401 Labeled "D"

One prepares for utilization the designated substances by utilizing the above-described emulsion of the oil in water type which contains 48 - 66 parts by weight of water and 34 - 52 parts by weight of solid substance. Of those 14 - 36 parts by weight refers to the macro crystalline paraffin and/or 6.6 - 9.5 parts by weight of stearate of ethylene-glycol and/or 5.4 - 8 parts by weight of monoglyceride of stearine and/or 3.6 - 10 parts of stearic acid and/or 3 - 4 parts by weight of sunflower oil and/or 2 - 3.6 parts by weight of mustard oil and/or 2.5 - 3.4 parts by weight of soya oil and additionally 3.2 - 5.5 parts by weight of the emulsifier (alkylglycol ether) and 0.6 - 1.2 parts by weight of triethanolamine as stabilizer. To this basic emulsion, one adds 4 parts by weight of the concentrate of nutritive substances. (Page 6, line 24 through page 7, line 6).

Relevant Portion Of BE '401 Labeled "E" and "F"

EXAMPLE 6

Content of water	66 parts by weight
Solid substances	34 parts by weight
Additive: nutritive substances	4 parts by weight

Composition of the solid substances

Macrocrystalline paraffin	23 parts by weight
Stearic acid	3.6 parts by weight
Mustard oil	2 parts by weight
Emulsifier	
Alkyl polyglycolic ether II	4.5 parts by weight
EO = 14, HLB = 10	
Triethanolamine	0.9 parts by weight

In testing the compositions of examples 1 to 6, either in the green house or in fresh air, one has compared them with the commercial product, FOLICOTE. In the green house one immerses tomatoes [sic. tomato plants] (Type K-700) in an emulsion containing 2.5% of solid substances and then planted them. One continuously checks the state of turgescence of the plants. (See page 11, lines 12-31). (Please note that at page 4, line 19, the term "turgescence" is defined as the state of saturation of the cells).

From the translated portions of BE '401, it can be shown that this patent teaches that the concentration of stearic acid used in the composition to be added to the plants is 1800-7200 ppm, which is a much higher concentration than the upper limit of 500 ppm as presently claimed.

In the passage marked as "D" of BE '401, 3.6 to 10% of stearic acid is added to 4% of fertilizer. Also, in the passage marked as "C", the stearic acid is mixed with a fertilizer to meet the range of 0.2 to 0.8%. In using the low value of 3.6%, the concentration of stearic acid can be calculated to be in a range of 1800 to 7200 ppm.

Furthermore, Applicants note that the exemplified embodiments teach away from the low end of the range. In Example 6 of BE '401, the passage "F" shows 2.5% of a solid substance in use. In the passage "E", the composition is diluted to 13.6 times the concentration, i.e., 34/100/0.025 = 13.6. Accordingly, the concentration of stearic acid in Example 6 is 2550 ppm, which can be calculated from the following equation: 3.6/104/13.6 = 0.255%.

According to MPEP §2131, a *prima facie* case of anticipation requires that each element of the presently claimed invention is taught in the cited reference. Applicants respectfully submit that BE '401 does not anticipate inventive independent claims 6

and 8, since BE '401 fails to teach an upper limit of the plant activating agent of 500 ppm.

JP '361

Applicants respectfully submit that inventive claims 6, 8 and 10 are not anticipated by JP '361, since JP '361 fails to teach or suggest an upper limit for the concentration of the plant-activating agent of 500 ppm, as presently claimed. In order to clarify this distinction, Applicants have prepared a) a copy of the Japanese language patent JP '361 with a portion circled and labeled as "A" on page 288 and a portion "B" on page 291; and b) a copy of an English translation of portions "A" and "B". These documents are attached hereto as an Appendix to this letter.

Based on Applicants' calculations, the concentration of stearic acid used in the Examples are: 3500 ppm (Example 1); 5% (Example 2); 24.3% (Example 3); 5% (Example 4); 1.67% (Example 5); 980 ppm (Example 6); 4.2% (Example 7); and 4.2% (Example 8). Thus, the minimum concentration of stearic acid used is 980 ppm.

As an example of how the concentration has been calculated, the following numbers were used from Example 1:

$1/(81+24+13+168+1) = 1/287 = 0.35\% = 3500$ ppm.

The following numbers were used from Example 6:

1/(4+3+3+9+0.1+1)/(1+20+15+15) = 0.05/51 = 0.098% = 980 ppm.

As the MPEP directs, all the claim limitations must be taught or suggested by the prior art to establish a *prima facie* case of anticipation or obviousness. See MPEP §§ 2131 and 2143.03. Since JP '361 fails to teach an upper limit of 500 ppm for the plant-activating agent, a *prima facie* case of anticipation or obviousness cannot be said to exist over JP '361.

With regard to the obviousness rejection, the Examiner, aware of the deficiencies of JP '361, cites Szoka et al. (U.S. Patent 4,394,149) in order to cure those deficiencies. Applicants respectfully submit that Szoka et al. fail to cure the deficiencies of JP '361.

Specifically, Szoka et al. fail to teach or fairly suggest an upper limit of 500 ppm for the plant-activating agent. Accordingly, Szoka et al. do not cure the deficiencies of JP '361 and a *prima facie* case of obviousness cannot be said to exist.

Based on the foregoing, Applicants respectfully request that the rejections under 35 U.S.C. 102(b) and 103(a) be withdrawn.

Conclusion

In view of the above amendments and comments, Applicants respectfully submit that the claims are in condition for allowance. A Notice to such effect is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact **Garth M. Dahlen, Ph.D., Esq.** (Reg. No. 43,575) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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JWB/GMD:bmp
0425-0836P

Attachments:
1) Copy of Belgian Patent No. 892,401
2) Japanese language patent JP '361
3) English Translation of JP '361

(Rev. 02/12/2004)